UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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JUN 20 2007

Ref: 8EPR-N

Jeff Burch
Grand Mesa, Uncompahgre
and Gunnison National Forest
2250 Highway 50
Delta, Colorado 81416

Re: Robin Redbreast Lode Claim FEIS
CEQ #20070203

Dear Mr. Burch:

The Region 8 Office of the Environmental Protection Agency has reviewed the Final EIS for the *Robin Redbreast Lode Claim Plan of Operations* and offers the following comments for your consideration.

1) Compliance with the Clean Water Act (CWA)

Based on the ground water conditions at the proposed mine site, it is anticipated that ground water of some unknown flow rate will discharge from the two proposed mine adits. Approximately one-half mile from the proposed mine site, a natural spring discharge shows an influence from naturally-occurring acid decomposition resulting in a mildly acidic flow with a pH of 4. Similar poor water quality may also be produced from these two proposed adits. At this level of acidity, decomposition of the waste rock, and country rock within the adits when exposed to the ambient air, could add toxic metal loading if discharged to the adjacent stream. Potential increased concentrations or loadings of zinc, copper, and cadmium would be of particular concern in this discharged water. Fish and other aquatic life are relatively intolerant of low concentrations of these metals. For example, at a total hardness of less than 50, chronic zinc concentrations at only 68 parts per billion (ppb) would impair the fishery.

The discharge of water from these proposed mine adits is likely to be subject to the provisions of the National Pollution Discharge Elimination System (NPDES) pursuant to Section 402 of the CWA. For example, see Sierra Club v. El Paso Gold Mines, Inc., 421 F.3d 1133 (10th Cir. 2005) cert. den. 126 S.Ct. 1653 (2006). EPA has authorized the State of Colorado to administer the CWA NPDES program. The Millers will need to apply for and receive a NPDES permit from the State of Colorado prior to commencing discharge of pollutants from a point source to a "Water of the United States." At this remote location, where access is limited to the short summer season and without year-round access to electricity, it will be unlikely to manage this water flow by any active treatment system. Based on the stream's classification as "outstanding natural resource water," no measurable degradation of the stream's water quality

may be permissible under this State NPDES permitting process. Prior to issuing the ROD, the Millers should apply for and receive an NPDES permit. The Record of Decision should establish what actions will be taken to demonstrate compliance with state-issued NPDES permit provisions. In particular, the ROD should define how the proposed mine's water treatment system will be designed and operated to assure compliance with the year-round stream discharge limitations even when the mine is inaccessible due to snow and cold weather. There will be no operator access or electrical power at the mine drainage treatment facility most of the year.

2) Compliance with the Safe Drinking Water Act (SDWA)

The current plan of operations indicates that mine waters from the two proposed adits may be pumped to a location known as the "old Brutus shaft" located within the claim area. The disposal of produced mine waters underground, such as discharge to an abandoned mine shaft, will be subject to the SDWA provisions for permitting as an underground injection. This type of mine water disposal method is a "Class V" UIC well which is administered by the EPA. To date, there has been no application by the Millers to EPA Region 8 regarding a request for a SDWA Class V UIC well permit for the Robin Redbreast Mine. Prior to issuing the ROD, the Millers should apply for and receive a UIC permit so that the ROD demonstrates how this proposed action will maintain compliance with the provisions of the SDWA.

3) Management of waste rock

According to the Millers' revised proposed Plan of Operations submitted August 10, 2006, the 'acid generating rock' will be removed from the mine site and transported out of the Wilderness either by mule or by helicopter. Removal of waste rock, capable of generating acid, would substantially reduce the long-term risk of water quality degradation and loss of aquatic fishery habitat. However, the Final EIS concludes that such removal is not likely given the number of mules trips required daily during the short 90-day access period. If only a portion of the waste rock is 'acid generating,' then only this portion may need to be removed to accomplish the desired environmental protection. Waste could be tested on site with the simple 'pH paste test' to determine which waste rocks are 'acid generating' and therefore would be transported by mule or helicopter off the claim. The 'pH paste test' EPA recommends is known as Method 9045D – Soil and Waste pH.

Thank you for the opportunity to review this Final EIS. Please contact Wes Wilson for further explanation of these comments and concerns at (303) 312-6552.

Sincerely,

Larry Svoboda
Director, NEPA Program
Ecosystems Protection and Remediation

cc: Janet Kieler, CDPHE, Denver
Bob Oswald, CDMG, Denver